



Handwritten initials: # AF and JFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Warner R.T. Ten Kate et al.
SERIAL NO. : 09/478,080 EXAMINER : Michael N. Opsasnick
FILED : January 5, 2000 ART UNIT : 2655
FOR : TRANSMISSION SYSTEM FOR TRANSMITTING A MULTIMEDIA
SYSTEM

APPEAL BRIEF TRANSMITTAL LETTER

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Dear Sir:

Appellants respectfully submit three copies of an Appeal Brief For Appellants that includes an Appendix with the pending claims. The Appeal Brief is now due on APRIL 16, 2006.

Appellants enclose a check in the amount of \$500.00 covering the requisite Government Fee.

Should the Examiner deem that there are any issues which may be best resolved by telephone communication, kindly telephone Applicants undersigned representative at the number listed below.

Respectfully submitted,
Daniel Piotrowski
Registration No. 42,079

By: Steve Cha
Attorney for Applicant
Registration No. 44,069

Date: March 15, 2006

Mail all correspondence to:
Daniel Piotrowski, Registration No. 42,079
US PHILIPS CORPORATION
P.O. Box 3001
Briarcliff Manor, NY 10510-8001
Phone: (914) 333-9608
Fax: (914) 332-0615

Certificate of Mailing Under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to MAIL STOP APPEAL BRIEF- PATENTS, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA. 22313 on March 15, 2006.

Steve Cha, Reg. No. 44,069
(Name of Registered Rep.)

(Signature and Date)

03/17/2006 MBIZUNES 00000026 09478080

01 FC:1402

500.00 DP



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

In re the Application

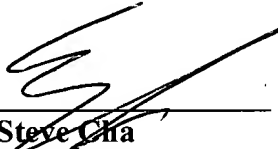
Inventor : Warner R.T. Ten Kate et al.
Application No. : 09/478,080
Filed : January 5, 2000
For : TRANSMISSION SYSTEM FOR TRANSMITTING A
MULTIMEDIA SYSTEM

APPEAL BRIEF

On Appeal from Group Art Unit 2655

Dan Piotrowski
Registration No. 42,079

Date: March 15, 2006


By: Steve Cha
Attorney for Applicant
Registration No. 44,069

Certificate of Mailing Under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to MAIL STOP APPEAL BRIEF-PATENT, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA. 22313 on March 15, 2006.

Steve Cha, Reg. No. 44,069
(Name of Registered Rep.)



(Signature and Date)



TABLE OF CONTENTS

	<u>Page</u>
I. REAL PARTY IN INTEREST.....	3
II. RELATED APPEALS AND INTERFERENCES.....	3
III. STATUS OF CLAIMS.....	3
IV. STATUS OF AMENDMENTS.....	3
V. SUMMARY OF CLAIMED SUBJECT MATTER.....	3
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.....	4
VII. ARGUMENT.....	5
VIII. CONCLUSION.....	12
IX. CLAIMS APPENDIX.....	13
X. EVIDENCE APPENDIX.....	18
XI. RELATED PROCEEDINGS APPENDIX.....	18

TABLE OF CASES

<u>In re Vaeck</u> , 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)	8
<u>Yamanouchi Pharmaceutical Co. v. Danbury Pharmacal, Inc.</u> 231 F. 3d. 1339, 56 USPQ2d. 1641, 1644 (Fed. Cir. 2000)	9
<u>In re Rouffet</u> , 149 F.3d 1350, 1357-58, 47 USPQ 2d 1453, 1457 (Fed. Cir. 1998)	9
<u>In re Ratti</u> , 270 F.2d 810, 123 USPQ 349 (CCPA 1959)	8
<u>Ex parte Levengood</u> , 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) .	10-11
<u>In re Fine</u> , 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)	11

I. REAL PARTY IN INTEREST

The real party in interest is the assignee of the present application, U.S. Philips Corporation, and not the party named in the above caption.

II. RELATED APPEALS AND INTERFERENCES

With regard to identifying by number and filing date all other appeals or interferences known to Appellant which will directly effect or be directly affected by or have a bearing on the Board's decision in this appeal, Appellant is not aware of any such appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-3, 5-7 and 9-19 have been presented for examination. All of these claims are pending, stand finally rejected, and form the subject matter of the present appeal.

IV. STATUS OF AMENDMENTS

The Amendment after the Final Office Action filed January 4, 2006 has been entered. No amendments were made to the claims in response to the rejection of the claims recited in the Final Office Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The instant patent application recites an arrangement (claim 1) for reproducing a multimedia signal consisting of a presenting means for presenting the signal at a

presenting speed and a delay determining means for determining packet delay representing a reception rate of the arrival delay of packets from a network carrying the signal and a comparison means for determining a difference value between the packet delay and a reference value and adapting the reference value in dependence upon the variations of the difference value. (see page 3, lines 22-26 and lines 29-31). Independent claim 9 recites a method for determining a packet delay representing a reception rate of an arrival delay of packets from a packet switched network carrying a multimedia signal, and determining a difference value between the packet delay and a reference value, wherein the reference value is adapted in dependence on the variations of the difference value and further adjusting the presenting speed in dependence on the difference value, so that the presenting speed correlates to the reception rate. Independent claim 18 describes a processor configured to execute the method steps recited in independent claim 9.

VI. GROUND FOR REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal are whether:

1. Claims 1-3, 5-7 and 9-19 are unpatentable under 35 USC 103(a) over the combination of Okada (USP no. 5,809,454) in view of Itakura (USP no. 5,901,149) and further in view of Balakrishnam (USP no. 5,566,208).

VII. ARGUMENT

1. 35 USC §103 Rejection of claims 1-3, 5-7 and 9-19

The rejection of claims 1-3, 5-7 and 9-19 is in error because the references fail to show a limitation cited in the independent claims and the claims depending therefrom.

Okada discloses an audio reproducing apparatus that includes an audio decoder and a voice speed converting unit. The device of Okada provides a means for synchronizing an audio track with a video track when the playback speed is either in a fast forward mode or a slow play mode. Okada teaches that “when the bit rate of the [input] system stream is greater than that in a normal playback mode, the bit rate of audio signals becomes greater and when the bit rate of the [input] system stream is smaller ... the [output] bit rate ... becomes smaller.” (see col. 6, lines 47-52). Okada teaches that in the fast playback mode, the audio bit stream is faster than the normal rate and the voice speed is made to approach that of the normal playback mode by a compression of the speech intervals. (See col. 8, lines 56-67). This compression factor is determined from the playback speed “m”. In the slow playback mode, the bit rate becomes lower than in normal playback mode and soundless intervals are placed between sound intervals. The length (L2) of the sound intervals is set by a fixed ratio to the time length (L1) of a sound interval in the normal playback mode. (see col. 9, lines 50-52). In this mode, the output bit rate matches the input bit rate and the length of soundless intervals is adjusted to compensate for the slower bit rate.

In determining the processing performed to generate the output signal, Okada further teaches using a difference between an upcounter and a downcounter,

where the upcounter counts the total number of pulses of a write clock and the downcounter counts the total number of read clock pulses. "The difference (i.e., count value) [indicates] the storage amount in the ring memory." (see col. 7, lines 20-32). Okada teaches that to determine whether the input stream speed is greater or less than normal playback speed an absolute difference between the upcounter and downcounter values is used and this difference is used to determine whether compression or expansion is performed on the output signal.

Hence, Okada teaches as system wherein the output rate is substantially the same as the input rate with compressed sound intervals when the input rate is high and extends soundless intervals when the rate is low. Okada, however, fails to disclose the comparison of the input rate with regard to a reference value to determine whether to perform compression of sound or expansion of soundless intervals. Okada further fails to disclose adjusting the reference value dependent upon the variations of the difference value.

Itakura discloses a decoding system in which a system clock is generated based on a time stamp contained in the transmission data and stored in a storage unit. The read-out of data from the storage unit is greater when the storage amount is greater than a predetermined reference value and lower when the storage amount is smaller than the predetermined reference value. Itakura, accordingly, discloses a system that varies the read-out rate (output rate) based on the amount of data available in the storage medium but fails to disclose or suggest adjusting the read-out rate dependent on the reception rate or the packet delay in the network. Itakura further fails to disclose

adjusting the reference value in dependence on the variations of the difference value between the packet delay and the reference value, as is recited in the claims.

Balakrishnam disclose a system with an encoder buffer having an effective size that varies automatically with the channel bit-rate. Balakrishnam more specifically discloses that "[t]he encoding rate is varied so as to maintain a fill level in the encoder buffer within limits. In the preferred embodiment, the logical encoder buffer has a size which is maintained at $R\Delta T(1-m_1)-M$, where R is the average transmission bit-rate, which may vary, ΔT is the fixed delay between the encoding and decoding process for a transmitted video signal, $R(1-m_m)$ is the minimum instantaneous transmission rate that the communication system achieves at average rate R , and M is the maximum total buffer storage in the communication system. When the decoder buffer has a size less than $R\Delta T(1+m_2)$ where $R(1+m_2)$ is the maximum instantaneous transmission rate at average rate R , the encoder buffer fill level is maintained above a minimum level that is equal to the amount by which the decoder buffer is less than $R\Delta T(1+m_2)$." (see Abstract).

Accordingly, Balakrishnam teaches setting a fill level based on the level of the decoder buffer considering a fixed time delay between encoding and decoding processes. However, Balakrishnam fails to teach or suggest any processing associated with determining a packet delay value or determining a difference value between a packet delay and a reference value or adapting the reference value in dependence upon the variation of the difference value, as is recited in the claims. Rather, Balakrishnam's setting of the buffer size based on a fixed delay that is not related to the packet delay. Balakrishnam further fails to provide any teaching to adapt the reference value based on variations on a difference between the packet delay and the reference value.

It is respectfully submitted that in order to establish a *prima facie* case of obviousness, three basic criteria must be met;

1. there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings;
2. there must be a reasonable expectation of success; and
3. the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)

With regard to the invention as recited in claim 1, for example, Appellant respectfully submits that a *prima facie* case of obviousness has not been set forth. Okada teaches using up/down counters to adjust the presentation speed and provides no suggestion or motivation to incorporate a reference value that varies dependent upon the variations of a difference between a packet delay value and the reference value.

Itakura teaches a system that varies the presentation rate based on the amount of data in the output buffer and is independent of any packet delay that may be experienced in the transmission network.

Balakrishnam teaches sizing the input buffer based on fixed time delay between encoding and decoding processing times which is not related to the packet delay. Balakrishnam fails to provide any teaching for using the packet delay or for adapting a reference value in dependence upon the variations of a difference between a packet delay value and the reference value.

Contrary to the reason for rejecting the claims, as recited in the Final Office Action and maintained in the Advisory Action, the combination of Okada, Itakura and Balakrishnam fails to render obvious the aforementioned claims as the combination of Okada, Itakura and Balakrishnam fails to teach or suggest a material element recited in the claims

In the matter of obviousness there is a great emphasis placed on “the importance of the motivation to combine.” Yamanouchi Pharmaceutical Co. v. Danbury Pharmacal, Inc. 231 F. 3d. 1339, 56 USPQ2d. 1641, 1644 (Fed. Cir. 2000). More specifically, in the matter of obviousness, the court found that:

an examiner ... may often find every element of a claimed invention in the prior art. If identification of each claimed element of the prior art was sufficient to negate patentability, very few patents would ever issue. Furthermore rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner ... to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention ... To counter this potential weakness in the obviousness construct, the suggestion to combine requirements stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness. id. quoting In re Rouffet, 149 F.3d 1350, 1357-58, 47 USPQ 2d 1453, 1457 (Fed. Cir. 1998)

Rather than finding motivation to incorporate a presentation rate based on the difference between the packet delay and a reference value and further adjusting the reference value depending upon the difference value in the Okada reference, Appellant respectfully submits that the present invention has been impermissibly used as a blueprint to combine the teachings of the cited references.

For at least this reason the suggested changes to the Okada reference fails to render obvious the invention recited in the claims.

The Manual of Patent Examining Procedure (MPEP) provides further appropriate instruction by which the instant Appeal should be judged. MPEP, Eight Edition, Rev. 2, May 2004, provides, in the subsection entitled "The Proposed Modification Cannot Change The Principle Of Operation Of A Reference," appropriate instruction when a modification of a reference is suggested.

"If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious" (*In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). MPEP §2143.01, p. 2100-132.

Okada teaches using up/down counters to determine a difference in the reception and presentation rates and adjusts the presentation rate accordingly. Okada fails to teach or suggest a packet delay or a reference value to adjust the presentation rate and the introduction of using a difference between a packet delay and a reference value to determine the presentation rate is an operation not contemplated by the Okada device as this would increase the complexity of the Okada device.

For at least this reason the suggested changes to the Okada device fails to render obvious the invention recited in the claims.

In addition, MPEP section 2143 further states, in the section entitled: "Fact That The Claimed Invention Is Within The Capabilities Of One Of Ordinary Skill In The Art Is Not Sufficient By Itself To Establish *PRIMA FACIE* Obviousness:"

“A statement that modification of the prior art to meet the claimed invention would have been “well within the ordinary skill of the art at the time the claimed invention was made” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references.” *Ex parte Levengood* 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP §2143.01, p. 2100-131.

Appellant respectfully submits that the references fail to provide motivation to combine their multiple teachings and that even if the references were combined, a *prima facie* case of obviousness has not been made as the combination of the references fails to cite a material element of the claims.

For at least the above reasons, Appellant respectfully submits that a case of obviousness has not been set forth.

With regard to the remaining independent claims, these claims were rejected for the same reason stated in rejecting claim 1 and include subject matter similar to that recited in claim 1. Hence, for the remarks made with regard to claim 1, which are reasserted, as if in full herein, in response to the rejection of these claims, Appellant respectfully submits that a *prima facie* case of obviousness has not been set forth.

With regard to remaining dependent claims, these claims depend from an independent claim, which has been shown to not be rendered obvious in view of the cited reference. Appellant respectfully submits that the remaining dependent claims are allowable at least for their dependence upon allowable base claims, without even contemplating the merits of the dependent claims. (see e.g., *In re Fine*, 837 F.2d 1071, 5


USPQ2d 1596 (Fed. Cir. 1988), if an independent claim is non-obvious under 35 U.S.C. §103(a), then any claim depending therefrom is non-obvious).

VIII. CONCLUSION

In view of the law and facts stated herein, it is respectfully submitted that the teachings of the cited references fail to suggest the claimed invention and the burden of showing that the references disclose all of the features, expressly or inherently, recited in the claims has not been met. Therefore, reversal of all outstanding grounds of rejection is respectfully solicited.

Respectfully submitted,
Dan Piotrowski
Registration No. 42,079

Date: March 15, 2006


By: Steve Cha
Attorney for Applicant
Registration No. 44,069

IX. CLAIMS APPENDIX

The claims which are the subject of this matter are as follows:

Claim 1: An arrangement station for reproducing a multimedia signal, the arrangement comprising:

presenting means for presenting the multimedia signal to a user at a presenting speed;

delay determining means for determining packet delay representing a reception rate of the arrival delay of packets from a packet switched network carrying the multimedia signal, and

wherein the presenting means includes:

a comparison means for determining a difference value between the packet delay and a reference value, wherein the reference value is adapted in dependence on the variations of the difference value; and

an adjusting means for adjusting the presenting speed in dependence on the difference value, so that the presenting speed correlates to the reception rate.

Claim 2: The arrangement according to claim 1, wherein the multimedia signal comprises an audio signal, and in that the presenting means are arranged for varying the presenting speed of the audio signal while keeping a perceived intonation of the audio signal at a same reference level.

Claim 3: The arrangement according to claim 2, wherein the audio signal is represented by a plurality of segments comprising a plurality of signals being described by at least their amplitude and frequency, and in that the presenting means are arranged for changing the duration of said segments in dependence on said packet delay.

Claims 4-5. (Cancelled).

Claim 6: The arrangement according to claim 1, wherein the multimedia signal comprises a video signal.

Claim 7: The arrangement according to claim 6, wherein the video signal is represented by a at least one object, and in that the presentation means are arranged for varying the presentation speed by adjusting a movement speed of at least one object in the video signal.

Claim 8. (Cancelled)

Claim 9: A method for reproducing a multimedia signal, said method comprises presenting the multimedia signal to a user, determining a packet delay representing a reception rate of an arrival delay of packets from a packet switched network carrying the multimedia signal, and determining a difference value between the packet delay and a reference value, wherein the reference value is adapted in dependence on the variations of

the difference value; and adjusting the presenting speed in dependence on the difference value, so that the presenting speed correlates to the reception rate.

Claim 10: The method according to claim 9, wherein the multimedia signal comprises an audio signal, and in that the method comprises varying the presenting speed of the audio signal without substantially changing a perceived intonation of the audio signal.

Claim 11: The method according to claim 10, wherein the audio signal is represented by a plurality of segments comprising a plurality of waveforms being described by at least their amplitude and frequency, and in that the method comprises changing the duration of said segments in dependence on said packet delay.

Claim 12: The method according to claim 9, wherein the multimedia signal comprises a video signal.

Claim 13: The method according to claim 12, wherein the video signal is represented by at least one object, and in that the method comprises varying the presentation speed by adjusting a movement speed of at least one object in the video signal.

Claim 14: The arrangement according to claim 1, wherein the delay determining means measures a delay of the packets by comparing timestamps of the multimedia signal.

Claim 15: The arrangement according to claim 1, wherein the delay determining means measures a delay of the packets based on the number of packets present in a buffer with a reference value REF.

Claim 16: The arrangement according to claim 1, wherein the presenting means varies the presentation speed within 240% without substantially changing the intonation of an audio signal component of the multimedia signal.

Claim 17. (Cancelled)

Claim 18: An arrangement station for reproducing a multimedia signal, the arrangement comprising:

a processor configured to present the multimedia signal to a user; determine a packet delay representing a reception rate of the arrival delay of packets from a packet switched network carrying the multimedia signal, and determine a difference value between the packet delay and a reference value, wherein the reference value is adapted in dependence on the variations of the difference value; and adjust a presenting speed in dependence on the difference value, so that the presenting speed correlates to the reception rate.

Claim 19: The station according to claim 18, wherein the multimedia signal comprises an audio signal, and in that the processor varies the presenting speed of the audio signal according to the reception rate while keeping a perceived intonation of the audio signal at same reference level.

X. EVIDENCE APPENDIX

No supplemental evidence was provided by appellant that was entered into the record during the prosecution of this matter.

XI. RELATED PROCEEDING APPENDIX

No related proceedings are pending and, hence, no information regarding same is available.